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the relevant age/earnings related personal pension limits, but only if it would be allowed under the existing rules.

## Implications

The introduction of the stakeholder pension will have implications for many employers. Those who do not currently offer access to an occupational scheme, and those that require employees to wait more than a year before becoming eligible to join their company scheme, will be required to 'provide access to' a stakeholder scheme. (Note, this will not apply to employers with fewer than five employees.)

'Access' means that the employer must nominate a particular stakeholder scheme - this does not imply recommendation of it - which employees may or may not decide to join. Where employees agree to join the nominated scheme, the employer will be required to deduct contributions through the pay roll and pass them on to the scheme.

There have been many changes in the field of pensions in recent years. Given the long-term implications of pensions in public policy terms, the Government hopes desperately that its plans in this area will prove a lasting and mutually satisfactory response to future needs. To maximise the impact of the stakeholder, a massive advertising campaign is expected in the run up to April.

## Part-timers' pensions

A long-running dispute about the rights of part-timers to earn benefits from their employer's pension scheme has resulted in a major ruling from the European Court of Justice which has implications both for part-timers' pension benefits and for employers' liability to fund those benefits.

The core of the ruling is that part-time staff have the right to back-date their membership of their company's pension scheme to as far back as 1976.

The ruling was prompted by a referral by the House of Lords to the European Court of Justice of a number of cases appealing against the UK Government's implementation of an earlier ruling on the rights of part-timers. Following this ruling, which decreed that it was illegal for employers to discriminate against part-time staff in the provision of pension benefits, the UK insisted that any attempt by a part-timer to join a pension scheme could only be back-dated by two years. The appeal to the House of Lords had argued that this two-year limit was illegal.

## The current situation

The situation now, therefore, is that the two-year limit will have to go. Under the ruling, any part-time employees who have suffered discrimination in pensions treatment will be able to claim membership of their workplace schemes and, theoretically at least, to back-date membership to 1976, thus boosting their benefits on retirement.

An early estimate of how much the ruling will cost UK employers quoted a figure of £17 billion. Subsequent, more sober estimates scaled this down closer to £100m. The reason for the wild fluctuation in these estimates is, partly, that no one is quite sure yet how many people will be in a position to make a claim and how many of them will, in fact, choose to do so.

The truth is that taking advantage of the ruling will not be quite as straightforward as it may initially sound.

Firstly, in order to be able to make a claim, a part-time worker will need to be working for the employer concerned or have left that employment no more than six months before claiming.

Secondly, he or she must have been working for the employer for long enough to qualify for membership of the company scheme. In some cases this can mean a year or two, enough to disqualify many part-time staff, who tend to change jobs often.

Thirdly, in order to fully back-date membership, the part-timer will have to pay all the employee contributions that were due if he or she had been a member of the scheme throughout the period concerned. It remains to be seen how many part-time staff will have the resources or the will to fulfil this requirement.

Fourthly, the ECJ ruling left open the possibility of allowing the UK to enforce the standard six-year limit, which applies to contractual claims in the UK, on back-dated claims. This would mean that, even if an individual were prepared to pay all his or her back contributions, the employer's liability in respect of that back-dated membership could be limited to six rather than the 24 years envisaged in the ruling.

An important additional factor in all this is that most of the potential claimants for back-dated pension scheme rights are believed to work in the public sector rather than the private sector.

So, while employers need to be prepared for long-serving part-time staff to enquire as to their position and to assert their rights, the effect of the ruling is likely to be minimal on most firms, particularly those in the SME sector.

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# Trust me, I'm an economist

Using economic analysis to win an argument may give a flawed result, especially when applied to the resale price maintenance case, suggests **Dr Darrin Baines** in the first of two articles

**T**here is an old joke that goes "if you put two economists in a room, you end up with three opinions". Although this is very trite, professional economists find it extremely funny because it is so true. Not only do economists disagree with each other, but their beliefs often depend on their prejudices, knowledge and personal experiences.

One thing most of the profession can agree on, however, is that when dealing with the outside world, economists must maintain that their arguments are scientific and value-free in order to stay in business.

This article discusses some of the problems encountered when using conventional economics, with the inherent flaws described above, to analyse whether or not resale price maintenance for medicines should be ended. It suggests that mainstream economic analysis alone cannot answer this question.

A second article, to be published in *C&D* next week, will look at alternatives to the market-focused economics supported by the Office of Fair Trading. It will argue that there must be a debate about whether economics is the correct framework for analysing the RPM issue or if we need find another way of resolving the problem before a conclusion can be drawn by the Restrictive Practices Court.

The RPM case might take longer to resolve as a result, but the delay could mean that dispensing pharmacists get

a fairer decision than they might otherwise have done.

## An ideological spin?

Although economists use language which appears neutral and detached, there is always an underlying bias. For example, the USSR had legions of professional economists who supported the state's position and were vehemently against the market-dominated capitalism of the West.

Economic analyses always start from an ideological position. For instance, the environment should be protected, the state should provide a safety net for individuals, or markets are best. However, these hidden agendas are rarely stated when economists perform their 'scientific' analysis.

From the perspective of governments, companies or interest groups, the good thing about economists is that, if you search long enough, you can always find one willing to support any argument, however biased. We need to examine carefully what economists say because they may be disguising an ideological position as rigorous work.

## The RPM hearing

The procedure for considering the future of resale price maintenance is in serious difficulties.

According to recent press reports, the economist on the Restrictive Practices Court panel, Dr Penelope Rowlatt, enquired about a job with a consultancy firm which had given evidence for the office of Fair Trading supporting the ending of resale price



maintenance. In response, the appeal court dismissed the whole panel considering the case.

From an economist's perspective, Dr Rowlatt's behaviour was unsurprising. According to mainstream economic theory, rational individuals should act in their own best interests and maximise their personal welfare, regardless of the consequences for others or society as a whole.

It is unlikely that Dr Rowlatt actually intended to act in a biased way or to undermine the procedures of the Restrictive Practices Court. Mainstream economic theorists, however, would congratulate her for doing what was best for herself, in spite of its impact on the case in which she was involved.

### Not an objective tool?

Philosophically-minded economists have long concluded that economic analysis can never be value-free. Only the naïve or manipulative argue that mainstream economics is an objective tool for making policy decisions about the world in which we live.

Naïve mainstream economists are ideologically committed to the belief

that markets are best, regardless of the consequences of their operation. However, markets are only efficient if individuals relentlessly pursue their own self-interests without considering the common good.

Consequently, free markets can sometimes encourage unethical behaviour, and do not protect the poor or promote the equitable distribution of our scarce resources. The National Health Service, for instance, was established in 1948 in an attempt to avoid the manipulations, excesses and unfairness evident in private markets for healthcare.

As this example demonstrates, in unregulated free markets, individuals may prosper at the expense of other people or the societies in which they live. Therefore, mainstream economics tends to support short-term self-interest, rather than the long-term interests of the community.

### Is that really fair?

In response to the ideological position held by mainstream theorists, many economists now argue that the profession should be concerned with doing what is 'best'

for our societies, rather than dogmatically arguing that all markets should be free.

However, this view requires economists to state what is 'best'. This presents another opportunity for bias, as economists can design or choose frameworks that support their personal views of how society should be organised.

A concern for fairness does not guarantee impartiality, as different economists may have widely varying views about what being 'fair' actually means in theory or practice. If you want resale price maintenance to continue, for instance, you will agree with an economist who believes that 'fairness' means protecting the hard-working, disadvantaged pharmacist.

If you believe in abolition, find an economist who is willing to argue that, to be 'fair', we need cheaper drugs for the hard-working, disadvantaged consumer. However, if you realise how easily the language of justice can be manipulated to justify any position, go back to the start and look for another means of resolving the resale price maintenance case.

### Speaking in theory

When economists talk about markets, they are using the word in a special sense.

For an economist, a 'market' is a highly abstract, theoretical construct, which has never been observed in practice. For the profession's theoretical model to operate efficiently, a long list of assumptions has to be fulfilled. For example, consumers have to be fully rational, fully informed, utility maximisers, which requires heroic axioms such as 'perfect excludability' and 'non-transferability' to be met.

If this jargon means nothing to you, don't worry, as these assumptions are so unrealistic that they don't apply in practice. Indeed, be happy in your ignorance because the alternative is being well-versed in the ridiculous.

A major concern of mainstream economists is that markets fail to operate as their grand theory suggests. In response, they have attempted to identify the main causes of 'market failure' and have claimed that 'price fixing agreements' such as resale price maintenance are manipulations that prevent markets achieving an efficient outcome.

Consequently, resale price maintenance is automatically deemed to be a bad thing, although this position requires the implicit adoption of the ideological view that

efficiency should be our sole concern when organising society's productive machinery.

### Being realistic

Realising the limitations of mainstream theory, many economists now argue that, instead of trying to make actual markets reflect the profession's conceptual gold standard, greater attempts should be

made to understand - rather than rectify - market failures.

Within this line of thinking, some economists have suggested that resale price maintenance may - contrary to conventional

thinking - be a logical response to the inability of some markets to operate efficiently. Consequently, we should not automatically try to abolish such price fixing agreements, but should, firstly, try to understand why they came about and then measure who benefits and who loses from their continuation.

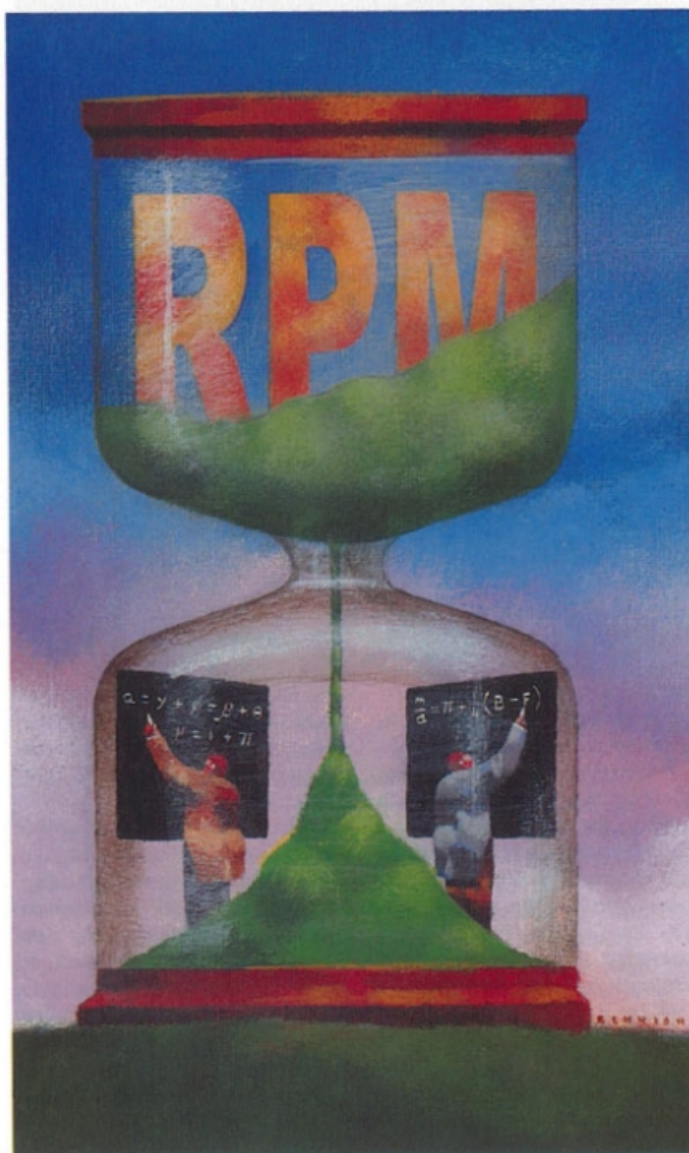
The problem with pragmatic approaches to solving problems is that, usually, they are also based upon some hidden ideological worldview or antiquated theory. In consequence, we may never be able to find an impartial way of judging whether we should rule for one side of a case or another, as our arguments will always be based on one biased theory or another. It could be argued that the Restrictive Practices Court should drop any pretence of impartiality and state where its bias lies. It could then produce a ruling that supports its pre-announced position.

### Back to the beginning

The arguments above tend to suggest that there is no way of producing an impartial judgement in the resale price maintenance case.

Consequently, the Restrictive Practices Court should simply decide which party to favour and rule on that basis. As many would find this line of reasoning disturbing or even annoying, the next article in this series will examine the court's decision-making process in more depth and suggest alternative ways of looking at the economics of resale price maintenance. It will not, however, suggest an easy solution or a way of rapidly resolving the dilemma.

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